

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CARL KIXMILLER,
APPELLANT
vs.**

**THE BOARD OF CURATORS OF LINCOLN UNIVERSITY, ET AL.,
RESPONDENTS**

DOCKET NUMBER WD72999

DATE: MAY 17, 2011

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division Three: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Attorneys:

George S. Smith, for Appellant

Kent L. Brown, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CARL KIXMILLER, APPELLANT

v.

THE BOARD OF CURATORS OF LINCOLN UNIVERSITY, et al., RESPONDENTS

WD72999

Cole County, Missouri

Before Division Three: Joseph M. Ellis, P.J., Victor C. Howard and Thomas H. Newton, JJ.

Carl Kixmiller appeals the judgment of the trial court dismissing his petition against the Board of Curators of Lincoln University, Carolyn Mahoney, and Jim Marcantonio. Mr. Kixmiller filed a two-count petition against Lincoln University seeking a declaratory judgment as to his rights relating to the termination of his employment and for damages for violation of due process. The trial court dismissed the petition based on the statute of limitation in section 536.110.1, RSMo Cum. Supp. 2009.

REVERSED AND REMANDED.

Division Three holds:

Where Mr. Kixmiller's petition did not establish on its face and without exception that Lincoln University was an agency, it failed to establish that the University's decision regarding his termination was a contested case subject to the statute of limitations in section 536.110.1 of the MAPA. The trial court erred in dismissing the petition on that basis.

Opinion by: Victor C. Howard, Judge

Date: May 17, 2011

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